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January 25, 2006

58679.00002

Dallas City Council
Dallas City Hall
1500 Marilla Street
Dallas, Texas 75201

Re: Opposition to Z045-107 (DW)

Dear Mayor Miller and Councilors:

1. INTRODUCTION

This letter, submitted jointly by the Coppell Independent School District (“CISD”) and the City of Coppell (“Coppell”) is in opposition to City Council agenda item Z 045-107, a straight rezoning application for mixed use multi-family (MU-3) and townhouse (TH-3) districts on a 342.60 acre site currently zoned A (A) Agricultural District with a small industrial planned development district No. 387 (coupled with SUP No. 953) (the “proposed development”).

At a planning and zoning hearing held on November 15, 2005, the Dallas City Plan Commission (the “Plan Commission”) recommended approval of the rezoning on the condition urged by the Planning Staff that the application be converted to one seeking PD (MU-3) and PD (TH-3) districting.

We urge the Dallas City Council to set aside the Plan Commission’s recommendation and DENY the application. We recommend that the City Council set in motion the creation of a regional plan for the entire North Lake site of 1,700 acres in cooperation with the cities of Coppell and Irving, CISD, the Carrollton-Farmer’s Branch Independent School District, and state agencies, Texas Utilities, developers and citizens, prior to any rezoning or development approval for any portion of the 1,700 acre North Lake site.

2. BACKGROUND

In the early 1950’s a 1,700 acre site (“North Lake”) was annexed into the City of Dallas to construct an electric generating plant for Dallas Power & Light, now Texas Utilities (“TXU”). The purpose of the annexation was to satisfy the law that a municipal electric utility plant was required to be located within the boundaries of the city. The 1,700

Dallas City Council

January 25, 2006

Page 2

North Lake site contains the electric generating plant on the north, an approximately 800 acre lake in the middle (used to cool the generators) and 400 acres of vacant land south of the lake. The annexation was accomplished by following a narrow right-of-way along Grapevine Creek for 3.8 miles from the boundaries of Dallas to the site. The site is completely surrounded by the cities of Coppell (on the west and north) and Irving (on the east and south). 95% of the site lies within the boundaries of CISD.

This "strip" annexation could not be accomplished today under existing Texas law. For 50 years this site has been used exclusively for industrial electric generation, experimental wind turbine electric generation facility (since closed), limited industrial facilities, the lake (for a period of time the lake was also used as a recreation site) and open space/agriculture.

In the 1994 Dallas Plan this site was shown, with the strip right-of-way appendage, but the Dallas Plan provided absolutely no land uses, policies or standards for the site. To date Dallas has not produced any plan, study, standards, regulations, policies or land uses for North Lake.

The original application on this site was submitted by CB Parkway Business Center VI, Ltd. &

Trammel Crow Co. No. 43, Ltd. ("CB" or "the Applicant") in November of 2004 after the closure of the sale from TXU on September 8, 2004. The application requested PD zoning for approximately 5,700 dwelling units together with associated retail and commercial. Extensive criticism of the total inadequacy of this proposal was put forward by Coppell, CISD, Irving and the Dallas planning staff by reason of (1) lack of adequate transportation, sewer, water, school, library, park, fire, police, emergency service and community recreation facilities; (2) potential risk of environmental contamination from toxic materials released from the electric generating plant; (3) lack of regional planning for the appropriate land use, density and character of the site with regard to the surrounding cities; (4) prospects of further transportation congestion with concomitant air quality and noise degradation; and (5) massive fiscal impacts and loss of property tax revenues for Coppell and CISD that will be engendered from the development, as well as the total inability of Dallas to provide services to this site without incurring huge deficits to its general fund, forcing reduction of services to other Dallas neighborhoods.

In response to this criticism, in June of 2005, CB submitted a new application reducing the density to 4,700 dwelling units. The application was accompanied by a revised traffic study that showed that current traffic congestion on the two main intersections of Belt Line Road and McArthur Boulevard with I-635 operated at level of service "F" (failure).

Subsequent to the amended applications, a series of staff meetings was held between the Dallas Planning Staff, CB and the administrative and planning staffs of Coppell and Irving

Dallas City Council
January 25, 2006
Page 3

at which time alternative land uses and fiscal cost sharing from sales tax revenue were explored for the site to relieve the regional incompatibility, severe congestion, public facility and environmental problems. Coppell and Irving indicated a willingness to explore providing sewer and water capacity to the site along with other municipal services and facilities for the site (if CB would consider alternative regionally compatible land uses), taking into account (1) the physical inaccessibility of the site and the huge costs that Dallas would incur to bring sewer, water, police, fire and emergency service to the site; (2) the inability of the property tax revenue stream for the property to cover these excessive costs; and (3) the cost of off-site traffic improvements in the millions needed to improve the level of service – none of which has been included in funded capital improvement programs of the state, Coppell, Irving or Dallas.

Nothing about any of these meetings and discussions appears in the Dallas Planning Staff report or in the Plan Commission's recommendation.

When the talks ceased without any results at the end of the summer of 2005, Coppell and CISD proceeded to prepare plans for the appropriate regional development of the North Lake site and other vacant parcels located in the vicinity of the CISD and Coppell. CISD prepared plans for the development of a new educational campus to meet the overcrowding of its current high school and the need for new facilities for the anticipated school population that would result from ultimate build-out of vacant land within the district, with or without the North Lake development. Coppell adopted an Intergovernmental Cooperation Element for its Comprehensive Plan to deal with the regional impact of adjacent development by encouraging regional planning and policies and particularly the need for affordable work force and senior housing to meet jobs – housing needs created by industrial and commercial development and for parks to accommodate regional population growth.

On November 21, 2005, after making good faith offers to CB, Coppell filed an eminent domain proceeding to obtain 71.590 acres of park and housing lands on the site. CISD, after making good faith offers to CB, concurrently filed on November 22, 2005, an eminent domain proceeding to obtain 125.831 acres of land for a school campus and educational facility on the site.

Shortly thereafter on November 29, 2005, CB filed a new application to permit 10,400 or more units on the same 342 acre site, asking for straight rezoning for multi-family housing with over 8,400 units on the land covered by the condemnations and 2000 units in TH-3A on the remaining land. The application was hastily drafted and was a handwritten cross-out of the June 2005 application. Moreover, Dallas Planning Staff did not do any studies or analysis of the new application. Instead, on the same day it received the application staff placed the request on the Plan Commission agenda for a hearing on December 15, 2005.

Dallas City Council
January 25, 2006
Page 4

The origin of the more than doubling the numbers of residential units from June 2005 is not clear. One rationale discussed by Dallas administrative staff was that if 4,700 units could not support services on the site, then doubling the number of units would appear to be the solution. Another purpose of the hasty reapplication appears to be simply to raise the cost of the condemnation to Coppell and CISD by rezoning the property.

3. THE PROPOSED REZONING HAS NO LEGITIMATE LAND USE PURPOSES

- a. Rezoning Land To Increase The Cost Of Condemnation To Public Entities Or For The Sole Purpose Of Providing A Fiscal Benefit To Dallas To Provide Sewer And Water To The Site Is Unreasonable, Arbitrary And Capricious.**

Local Government Code § 211.004 states:

- (a) Zoning regulations must be adopted in accordance with a comprehensive plan and must be designed to:
 - (1) lessen congestion in the streets;
 - (2) secure safety from fire, panic, and other dangers;
 - (3) promote health and the general welfare;
 - (4) provide adequate light and air;
 - (5) prevent the overcrowding of land;
 - (6) avoid undue concentration of population; or
 - (7) facilitate the adequate provision of transportation, water, sewers, schools, parks, and other public requirements.

None of these purposes are being met by the current rezoning proposal. The intensity of development at 10,400 units or greater will simply double or triple the problems of off-site traffic congestion, air quality and noise degradation, environmental risk, incompatibility with surrounding city uses, fiscal impacts on Coppell, CISD and Irving and aggravate lack of adequate provision of transportation, water, sewer, schools, libraries, park and recreational facilities, police, fire and emergency services.

Dallas City Council
January 25, 2006
Page 5

If Dallas has difficulty in meeting the cost of bringing sewer and water facilities to the property, one alternative answer lies in seeking sewer and water impact and connection fees from the developer – not to double densities to raise the property tax revenues of the city for a project that is totally unreasonable at the 4,700 dwelling unit level. That Dallas has no provision for impact fees is not a rationale for violating fundamental state policy and legislation that the costs of facilities whose need is generated by the development should not be borne by the general fund.

It is unreasonable and arbitrary for Dallas to support the increased densities regardless of the heightened impacts on schools, traffic, the environment, police, fire and emergency service, simply in an attempt to pay for sewer and water facilities that Dallas otherwise could not afford to deliver.

b. Rezoning Is Unreasonable, Arbitrary And Capricious If It is Designed Solely To Increase The Costs Of Condemnation To Coppel Or CISD.

It is improper, unreasonable, arbitrary and capricious for the City of Dallas to take any actions which increase the condemnation costs to Coppel and CISD on the portion of the property which has been condemned. Given the fact that both Dallas staff and CB have admitted that adequate public facilities and services are not currently available to the Proposed Development even at 4,700 dwelling units, the only conceivable reason for rezoning the condemned portion of the site is to raise the market value of the property in condemnation in the Applicant's favor. The objective of a rezoning is not to bestow favors upon a property owner or to discourage condemnors, yet that is exactly what approving the Proposed Development would accomplish. Indeed, Dallas has ceased to be the neutral arbiter and is making legislative decisions to help a particular property owner. This is untenable: governments may not create an economic advantage for property owners in condemnation by clothing its actions in the guise of the police power. The rezoning of property must be consistent with the public health, safety and welfare, not to benefit a single property owner. To attempt to increase the property value of the Proposed Development is inconsistent with the doctrine that the cost of community benefits should be distributed impartially among members of the community. When government helps itself in such a manner to the economic disadvantage of others including other governmental units, that government may be held liable for damages. *Steele v. City of Houston*, 603 S.W. 2d 786 (Tex. 1980).¹ Therefore, Coppel and CISD will consider whether to hold Dallas responsible for any increase in condemnation costs that

¹ Dallas cannot upzone the property to increase its revenue from the project which concurrently causes severe detriment to other public service providers (Coppel and CISD).

Dallas City Council
January 25, 2006
Page 6

they may incur as a result of any rezoning on the portion of the property that is being condemned.

It is irrational and inappropriate for Dallas to rezone property where CB will no longer be owner of the subject property and, therefore, has no authority to request the rezoning. Moreover, because a part of the subject property has been condemned by governmental entities which are independent of Dallas, the rezoning will never actually apply to that portion of the property, because CISD and Coppell will develop the property with appropriate public land uses for the area, namely school facilities, parks and open space, and affordable workforce and senior housing.

Should Dallas approve the proposed rezoning, it will be clear that Dallas is doing so only on one basis: quid pro quo. Rezoning should not be dependent on property ownership, but on the appropriateness of the actual uses proposed. In this instance, without any Dallas planning for the region or the site, with no studies on impacts on CISD, adjacent cities and property owners, it is apparent that the property owner here is actually driving this rezoning. To approve the rezoning only with the condition that all of the studies, plan, analysis of impacts, provision of services and facilities will be postponed to a later site plan review is the height of unreasonableness. It is totally arbitrary and capricious.

Rezoning of property is not about ownership, but about land use compatibility. No one questions that CB has significantly contributed to the City of Dallas downtown redevelopment program, and neither Coppell nor CISD questions CB's good faith commitment to that project. However, CB's good faith actions in downtown cannot translate into an automatic approval on the question of rezoning for the Proposed Development.

c. Rezoning Is Unreasonable, Arbitrary and Capricious Where There Are No Adequate Public Facilities Available To Serve The Site At The Magnitude of Density and Intensity Proposed For the Project

Both CB and the Dallas staff have admitted that provision of infrastructure and adequate public facilities at adopted planned levels of service is totally unavailable. Mr. Williams, a representative of CB, has admitted that CB will have to return to the City with a plan for provision of infrastructure before any building permits can be issued. (Transcript of December 15, 2005 Dallas Plan Commission Hearing (hereinafter "Trans.") at 38.) ("We know that we're going to have to address the public services regarding police and fire." (Trans. At 41.)) Ms. O'Donnell, Dallas City staff, stated:

Dallas City Council
January 25, 2006
Page 7

This is an outlying tract. And so there are going to be some -- there will be some different ways that we provide services. It's not as easy as just coming down and getting a water meter and tapping a line there.

So there is a number of very complicated engineering studies and questions that we have to answer. That's why we felt, and the applicant agreed, that before we finalize anything, we need to look at those arrangements, look at those costs, see how the services can be provided, and also how they could be phased in.

(Trans. at 64.)

Though CB has admitted that the proposed scheme whereby the City Council approve the rezoning to allow for over 10,400 units without any plan for how the infrastructure will be provided is "a little bit unusual because of its relation to the geographical relationship to the rest of the City" (Trans. at 5) and that "[n]ormally infrastructure issues are addressed during the planning process," (Trans. At 5), CB is nonetheless asking the City Council to take such unusual action. Moreover, Mr. Williams is referring to the planning process, which precedes the rezoning of a property, yet CB is essentially asking Dallas to allow for the planning of infrastructure to occur during the building permit stage. Indeed this type of situation is so unusual, that when asked by Commissioner Brandon, Ms. O'Donnell admitted that the Dallas Development Services Department has never entered into any agreement with utilities services via MU-3 with any other city as would be required in this case. (Trans. at 66.)

It is similarly illogical for CB to request zoning to allow for over 10,400 units if CB is not actually planning on building that many units. Indeed, though the Applicant has amended their application to allow for over 10,400 units, Mr. Williams stated "We don't have 10,000 dwelling units that need to be considered." (Trans. At 38.) How can CISD, Dallas, Irving and the City of Coppell plan for school facilities, transportation, police, fire, and emergency services with totally unknown impacts and demands from the development. If this is the case, and if indeed CB only desires to build the 4,700 units that were depicted in their second application, why did they amend their application. There is only one clear answer: to threaten Coppell and CISD in an attempt to make them either abandon or raise the cost of their condemnation petitions. Such action is not the basis of sensible land use decisions.

It should be stated unequivocally that the amended June 2005 application for approximately 4,700 dwelling units was also totally unreasonable given the location of the site, the lack of planning, the unavailability of adequate public facilities, and the staggering

Dallas City Council
January 25, 2006
Page 8

and unreasonable regional impacts placed on surrounding cities, CISD and property owners.

The logical and customary means of developing this property would be to adopt a plan for this property in its regional context and thereafter approve the rezoning and site plan concurrently, thereby allowing the decision makers to consider the proposed uses within the context of the plan and what will actually be built on the site and what infrastructure and facilities are necessary and available. CB's original application and the amended application concurred with this procedure, as CB applied for a PD zone and submitted a traffic study. Now, however, in the face of the pending condemnation, CB has suddenly changed its mind and now expects Dallas to approve high intensity zoning without having any understanding or planning to determine what can appropriately be built on the site. In doing so, Dallas may be sealing its own fate when the City discovers that it cannot adequately serve the property with infrastructure and services. Denial of the Proposed Development at the site plan or building permit stages, where the property has a vested right under Texas law to the densities and uses of the approved zones could subject Dallas to a takings claim.

d. The Proposed Rezoning Is Inconsistent With The Comprehensive Plan

Though adoption of a comprehensive plan is voluntary in Texas, if a municipality chooses to prepare and formally adopt a separate comprehensive plan, zoning and other land-use regulations adopted by the city must be consistent with that plan. *Mayhew v. Town of Sunnyvale*, 774 S.W.2d 284, 294-295 (Tex. App. Dallas 1989) cert. denied, 498 U.S. 1087 (1991); Tex. Local Gov't Code § 211.004. The 1994 Dallas Plan, does not provide for any residential development on this industrial site, much less high density residential development creating environmental, school, traffic, air quality, and public facility service burdens. Moreover, the Dallas Plan's Trinity River Corridor standards prohibit high density residential development for the corridor. The Dallas Plan calls for specific studies for the Trinity River Corridor and for greater open space and environmental standards for the corridor. North Lake, being a contributor to the Trinity River is under U.S. Army Corp of Engineers' jurisdiction. Indeed, the Applicant should be requesting an amendment to the Dallas Plan to bring it into conformity with the proposed zoning. No such request has been made.

Despite the fact that CB claims that the Proposed Development is consistent with the forthcoming Comprehensive Plan, the Dallas Plan is what is in effect today. Thus, the consistency of the Proposed Development with a new Comprehensive Plan (whose adoption is unknown and unsure) is totally irrelevant. Because the Proposed

Dallas City Council
January 25, 2006
Page 9

Development is inconsistent with the Dallas Plan, and because no plan amendment is proposed, the application for rezoning should be denied.

e. Rezoning Of The Proposed Development Will Violate Regional General Welfare And A Regional Plan Should Be Developed With Coppell, Irving, And CISD Prior To Any Zoning Or Development Of The Property

(i) Regional General Welfare

The subject property is located within Dallas, but is surrounded by, and will have significant impacts on, the cities of Coppell and Irving and CISD. Because of the site's special situation, it is most appropriate that planning for the site be accomplished with regional cooperation and consideration of multi-jurisdictional local needs on a regional level, not simply on a local level. The concept of 'regional general welfare', is directly applicable to the proposed development because "where the potential exists that a zoning action will cause a serious environmental effect outside jurisdictional borders, the zoning body must serve the welfare of the entire affected community. If it does not do so it acts in an arbitrary and capricious manner." *S.A.V.E. v. City of Bothell*, 576 P.2d 401 (Wash. 1978). Regional general welfare is a fundamental limitation on a local government's exercise of the state's power to further the health, welfare, and safety of its citizens. The state's delegated zoning authority is defined by the region in which a municipality or utility is located. See, e.g. *Associated Home Builders v. City of Livermore*, 557 P.2d 473 (Cal. 1976) (housing and adequate public facilities); *S.A.V.E.*, 576 P.2d at 405 (environmental impacts crossing city boundaries - "the crux of the problem is that the construction of a major shopping center would have serious detrimental effects on areas outside Bothell's jurisdiction...intensified commercial uses would require substantial investment in highways, sewer...with increased traffic congestion and serious air pollution problems...Under these circumstances, Bothell may not act in disregard of the effects beyond its boundaries."); Juergensmeyer and Roberts, Land Use Planning and Development Regulation Law, § 6.6 (2003).

Acceptance of the concept of "regional" general welfare is also implicit, if not explicit, in cases finding that nonresidents have standing to challenge a governmental entity's zoning decisions. The general rule is that as long as the applicable statutory or case law requirements for standing are satisfied, the nonresident has standing to challenge the decision based upon the effects of the decision on property outside the jurisdiction of the zoning authority. The classic case in this regard is *Borough of Cresskill v. Borough of Dumont*, 100 A.2d 182 (N.J. 1953) *aff'd* 104 A.2d 441 (N.J. 1954). In *Dumont*, several municipalities challenged the rezoning of a tract from residential to commercial in a neighboring jurisdiction. The court held:

Dallas City Council
January 25, 2006
Page 10

The public health, morals and welfare are not limited by the boundaries of any particular zoning district, or even by the boundaries of the municipality adopting the ordinance. . . . Hence, it becomes a legal requirement that the restrictions and regulations in a zoning ordinance must be made with reasonable consideration to the character of the land and also to the character of the neighborhood lying along the border of the municipality adopting the ordinance.

In the case of *Duffcon Concrete Products v. Borough of Cresskill*, 64 A.2d 347 (N.J. 1949) the court said: "What may be the most appropriate use of any particular property depends not only on all the conditions, physical, economic and social, prevailing within the municipality and its needs, present and reasonably prospective, but also to the nature of the entire region in which the municipality is located and the use to which the land in that region has been or may be put most advantageously." In the case of *De Benedetti v. River Vale TP. Bergen County*, 91 A.2d 353 (N.J. Super. Ct. App. Div. 1952), the court said: "[I]t is, accordingly, necessary to obtain a broad perspective of the municipality and the region in which it is located." In *City of Hickory Hills v. Village of Bridgeview*, 367 N.E. 2d 1305 (Ill. 1977) the Illinois Supreme Court held that a local government had standing to challenge the rezoning of land in a neighboring municipality to a higher intensity. The plaintiff was under a court order to supply services to the rezoned area, and alleged that public services were inadequate to accommodate the proposed development. The court recited the general rule in other jurisdictions that an "aggrieved person" with a real interest in the subject matter of the controversy may challenge a neighboring city's zoning ordinance. While the prior obligation to provide services to the property seemed to provide a special circumstance of unique impact, the Illinois Supreme Court in *Village of Barrington Hills v. Village of Hoffman Estates*, 410 N.E. 2d 37 (Ill. 1980) held that the reasoning of the case could be extended to include more generalized impacts on fiscal health and infrastructure.

Similarly, in *Associated Home Builders, Inc. v. Livermore*, 557 P.2d 473 (Cal. 1976) the California Supreme Court stated:

When we inquire whether an ordinance reasonably relates to the public welfare, inquiry should begin by asking whose welfare must the ordinance serve. In past cases, when discussing ordinances without significant effect beyond the municipal boundaries, we have been content to assume that the ordinance need only reasonably relate to the welfare of the enacting municipality and its residents. But

Dallas City Council
January 25, 2006
Page 11

municipalities are not isolated islands remote from the needs and problems of the area in which they are located; thus an ordinance, superficially reasonable from the limited viewpoint of the municipality, may be disclosed as unreasonable when viewed from a larger perspective.

These considerations impel us to the conclusion that the proper constitutional test is one which inquires whether the ordinance reasonably relates to the welfare of those whom it significantly affects. If its impact is limited to the city boundaries, the inquiry may be limited accordingly; if, as alleged here, the ordinance may strongly influence the supply and distribution of housing for an entire metropolitan region, judicial inquiry must consider the welfare of that region.

Texas law applies the same principles of growth management and regional general welfare. In *Mayhew v. Town of Sunnyvale*, 964 S.W. 2d 922 (Tex. 1998), the Texas Supreme Court stated cogently that:

the denial of the Mayhew's requested planned development with 3,600 units in a Town with only 2,000 residents substantially advances legitimate concerns for protecting the community from the ill effects of urbanization...This community would change drastically...Mayhew's planned development would result in an increase of population of between 10,000 and 15,000 persons more than quadrupling the size of the Town. Simply put the Town has a substantial interest in preserving the rate and character of community growth...

These same principles were stated with clarity in *Sheffield Development Co., Inc. v. City of Glenn Heights*, 140 S.W.2d 660, 667 (Tex. 2004) which justified reducing the proposed development population "from 3,090 to 1,563, and that a less densely developed subdivision would mean more open space and less traffic[,] . . . greater setbacks, fewer school children, less folks, and less noise..." (Internal citations omitted.) In *City of Pharr v. Tippitt*, 616 S.W. 2d 173 (Tex. 1981) the Texas Supreme Court adopted the principles of regional general welfare by concluding that lots which are rezoned in a way that is substantially inconsistent with the zoning of the surrounding area, whether more or less restrictive, are likely to be invalid.

Dallas City Council
January 25, 2006
Page 12

Here, because of the size, scale, location, and extraterritorial impacts of the Proposed Development, it must be considered a regional, not local development. As such, this development of regional impact requires a cooperative effort between all three cities, CISD and the developers, not a rushed decision without proper planning or analytical studies of regional needs and impacts. The Proposed Development has a regional impact and the planning for the site should minimize impacts on the region. Coppell and CISD stand ready at all times to participate in a proper regional planning process with Dallas for the North Lake site and for a regional plan to be developed over a 6 month to one year period.

(ii) Coppell's Intergovernmental Cooperation Element

Coppell has taken proactive steps to plan for its regional area. On December 13, 2005, the Coppell City Council adopted an Intergovernmental Cooperation Element (the "Element"), to its Comprehensive Plan. The purpose of the Element is to lay the foundation for building more effective regional partnerships in those areas external to Coppell's boundaries but whose development will significantly impact inside Coppell's boundaries. The Element includes plans and policies to encourage regional planning, including proposed land uses for other adjacent prospective as well as the subject property at issue in this rezoning. A copy of the Intergovernmental Cooperation Element is attached to this letter.

The 1,700 TXU site (the "TXU Study Area") is one of the areas which is addressed in the Element. Based on public comment, the community's long term vision of the TXU Study Area includes a mix of school, recreational and park facilities, along with alternative industrial uses on the southwest portion of the site, and housing, including workforce, senior, and low density residential uses on the southeast portion of the site. These uses would be buffered by open space just south of the lake and the retention of the lake and the northern electrical generating plan in its current form. The proposed uses are compatible with the existing and proposed land uses in the cities of Irving, Farmer's Branch, Carrollton and Coppell.

The Element recognizes the importance of efficient land use, facility provision and service delivery. By its adoption, Coppell has memorialized its desire to work cooperatively with services providers and bordering jurisdictions to protect private property rights, to ensure land use compatibility, and to preserve the community's and the region's quality of life from the adverse impacts of inadequate planning and arbitrary development approvals crossing jurisdictional lines.

Dallas City Council
January 25, 2006
Page 13

It is important to clear the record as to CB's claims regarding their attempts to work with Coppell regarding planning of and provision of services. The fact is, is that though representatives of Coppell and Irving have met with CB, at no time have Dallas or CB approached Coppell or CISD to discuss the possibility of inter-local agreements regarding land use, infrastructure, environmental and traffic impacts or other service provisions.

4. THE PROPOSED ZONING WILL CAUSE UNREASONABLE AND INORDINATE DETRIMENT TO THE REGION AND SURROUNDING AREAS

The Proposed Development will have severe adverse impacts on the surrounding area. "The nature and degree of an adverse impact upon neighboring lands is important. Lots that are rezoned in a way that is substantially inconsistent with the zoning of the surrounding area, whether more or less restrictive, are likely to be invalid." *City of Pharr v. Tippitt*, 616 S.W.2d 173 (Tx. 1981). The adverse impacts of this area include increased traffic congestion and decreased levels of service, fiscal shortfalls, environmental hazards, decreased noise and air quality, increased demand on schools without any contribution to new facilities, and total incompatibility with both the residential and non-residential areas of Coppell and Irving surrounding the site.

As submitted, the rezoning of the subject property could result in a maximum built-out scenario of almost 14,000 net dwelling units. Though CB indicates that they "only" plan to develop 10,488 units, because no site plan is required or has been submitted other than for 4,700 units, there is no guarantee that more units will not be constructed to the unlimited allowed densities. Indeed, both the Dallas staff report and the additional information provided by CB make a number of inappropriate assumptions. In particular, the staff report indicates that a neotraditional/ mixed use development shall be constructed on the subject property. It is as though the Dallas staff report is actually analyzing the June 2005 amended application instead of the Proposed Development. Though the June 2005 Amended Application purported to have elements of neotraditional development, there is absolutely no assurance that the subject property will be built in this manner. Moreover, the proposal violates every aspect of three major 21st century planning principles, new urbanism, smart growth and sustainable development. CB actually attached to the November 24, 2005 application for rezoning the site plan it proposed for the 4,700 units in the June 2005 application without any concomitant increase of open space public facilities or services on site. Thus, the staff report itself is flawed because it does not analyze the Proposed Development (which lacks any site plan or technical studies), but simply relies on CB's promises.

Dallas City Council
January 25, 2006
Page 14

a. Environmental Quality

As the Dallas staff report acknowledges, this site was part of TXU's power plant facility until approximately one year ago. This fact raises significant questions regarding the environmental status of the site that must be answered before zoning is approved that would permit residential uses that would potentially place children and adults at risk.

The power plant maintains a federal operating and acid rain permit, which authorize it to release carbon dioxide, sulfur dioxide and nitrous oxide. The power plant also maintains two above-ground storage tanks, and has or had two underground storage tanks. It is also registered as an industrial hazardous waste facility that has, or previously had, designated waste management units for lead-acid, NiCd and lithium batteries, solvents, paint wastes, mercury, oil and water sludge, blast sand, asbestos-containing insulation, ethylene glycol, PCB containing oil, transformers and contaminated soil, and caustic cleaning solutions. There is a great risk that the power plant's activities have had an adverse environmental impact on this site, through pollution of the groundwater or the surface waters, and the potential risk posed to future residents cannot be ignored. Indeed, Coppell and CISD have moved for an injunction in the condemnation cases calling for a Phase I and II environmental assessment. North Lake itself, because it is a major contributory to the Trinity River, is under Army Corps of Engineers' jurisdiction.

Despite these potential hazards, Dallas is not requiring any environmental assessment on the site to determine the suitability of the site for future development. At the very least, Dallas should require a Phase I and II Assessment and Preliminary Wetlands Determination and Characterization before the proposed zoning is approved that would potentially put future residents at risk.

Nor has CB or Dallas examined the impact of the high tension electrical transmission lines crisscrossing the property with its extraordinary level of electro-magnetic field activity. CB actually proposes in its June 2005 site plan that its primary open space for residents be placed directly adjacent to the power lines.

The Proposed Development will also have substantial negative impacts on noise in the area. Based on the traffic counts provided by Kimley-Horn, CB's traffic consultant, the Proposed Development would substantially increase noise levels at several points on the subject property and will lead to an increase of 60,000 to 100,000 trips per day generated from the site and result in further degradation of the air quality in northwest Dallas County.

Dallas City Council
January 25, 2006
Page 15

b. Traffic Impacts

The Traffic Impact Analysis ("TIA") conducted by Kimley-Horn and submitted by CB for the Amended Application, recognizes the increased traffic and congestion that an approximately 4,700 unit project would have brought to the site. CB has not provided any similar study for the 10,400 unit project, but it is easy to imagine that if a project less than one-half the size will create problems than the larger project will double the impact. Some of the impacts identified by the Kimley-Horn report include:

- Projected unacceptable levels of service on the street networks surrounding the North Lake site by year 2011, even without the potential development on the site. This projection is based on an increase in the background levels of traffic in the area of 1.5% per year.
- To achieve acceptable ("D") levels of service by 2011 from the current level of service "F" (failure), Kimley Horn recommends an entire slate of capital improvements to the street network in the area. Neither Kimley Horn nor CB has indicated the costs or feasibility of the improvements, who will pay for these improvements or whether Dallas has made any provisions in its CIP or long range transportation plan for such improvements. Currently neither the state nor Coppel or Irving have any budgeted capital improvements to fix these deficiencies. Thus, the existing levels of service "F" will grow worse to literal gridlock. Dallas has not provided for any off-site impact fees or exactions for the project development to cover the regional transportation improvements which will run in the millions.

In reality, the traffic study underestimates traffic which will be generated by the Proposed Development and the required infrastructure improvements. A few of the deficiencies include:

- The growth factor used in the TIA is only 1.5%, even though Kimley-Horn reports in the appendix that the growth rate is 4.7% per year at the intersection of Beltline and Hackberry and 10.7% per year at I-635 at McArthur. These larger numbers should have been used.
- The TIA fails to take school trips into account, even though the Applicant claims that it is setting aside land for a school site.
- The TIA uses the wrong Institute of Transportation Engineers (ITE) rates for multi-family and townhomes. Actual trips in the western U.S. for

Dallas City Council
January 25, 2006
Page 16

multi-family complexes approaches 9.57 trips per day. The result of using the multi-family rates is nearly 5,000 pm peak fewer trips forecast for the development than if the proper rates were used.

- The TIA uses ITE Code 222 for the 12-story high rise trip generation which is intended for a highly urbanized and transit rich setting such as one would find in a urban downtown area. The Proposed Development is not located in a transit rich area (there is no DART station nearby and public transit options are far fewer than in downtown Dallas). As a practical matter, a twelve-story high rise unit would generate nearly as many trips per day as a single family residence unit unless it is a senior facility or located at a DART station. Neither is the case.
- Although the TIA uses the ideal flow rate required by the North Texas Council of Governments (NTCOG), the report fails to use this rate, instead opting for a higher hourly flow rate resulting in an overly optimistic level of service (LOS) results. NTCOG recommends ideal flow rates from 700 vehicles per land per hour for a principal arterial to a high of 1,600 vehicles per land per hour, numbers which are far lower capacity than the 1,900 vehicles per hour used by Kimley Horn.
- The TIA calls for a U-Turn ramp, which is assumed to be a flyover, but it is unclear whether this is possible given interchange spacing regulations, existing freeway operations, and existing funding and programming by TXDOT. It is also unclear whether the recommended additional on and off ramps are feasible and have been funded mitigations as part of this development or as part of the TXDOT highway programs.

CB itself, in the provided supplemental information, acknowledges that North Central Texas has a funding shortfall of \$3.14 billion for transportation improvements, that congestion will cost the region \$8.2 billion in travel delays by 2025, that vehicle miles traveled increased 18.4%, nearly twice the growth of the population while during that same period signal and congestion delay time increased 37%. Despite these staggering numbers, the Proposed Development application provides no information as to how CB will mitigate these problems or who will pay for the necessary infrastructure. Instead, the supplemental information includes glossy photos of a remote CB development "Austin Ranch" which is located in Colony, Texas. This comparison is not only untenable, it does not provide any information on the traffic impacts of Austin Ranch. Austin Ranch has Planned Development (PD) zoning, which requires submittal of a site plan and review of technical studies prior to approval of the rezoning. Indeed, though CB suggests, and indeed the Dallas staff report states, that it will build a "neo-traditional mixed use development" there is absolutely no guarantee that this will occur or is even being

Dallas City Council
January 25, 2006
Page 17

proposed, nor is it required by the Dallas zoning code, even if a condition of PD is required.

It is unreasonable, arbitrary and capricious that Dallas is not requiring any type of traffic study or mitigation measure for the Proposed Development prior to zoning²

c. Impacts On Coppell For Facilities and Services

The Proposed Development will create an inordinate fiscal impact on Coppell, located directly adjacent to the site, compared with that of Dallas at least 3.8 miles away and much farther by public road. While Coppell will be unreasonably burdened by the development, it will not receive any tax revenues from the Proposed Development. To the contrary, Coppell will be impacted by demand from the project's residents for park improvements and operations, library facilities and operations, fire and police operations, and public works operations (facilities management and road maintenance), particularly on Belt Line Road west of the Proposed Development. For Coppell to maintain its current levels of service, it will be forced to expend resources to do so as a result of usage by non-residents alike, it will have to pay significant amounts without any benefit of revenue generation from the non-resident new users of those facilities. Moreover, as previously stated, Dallas has not adopted any impact fee ordinance nor has it imposed any impact fees or exactions on the Proposed Development for the off-site needs the development will generate.

(i) Parks, Libraries & Community Recreational Facilities

Based on the proposed zoning, the Proposed Development is not required to provide parks, community recreational facilities, open space or libraries for the residents, nor has Dallas indicated that they intend to seek dedication of parkland in the development or provide library services. Thus, the future residents will look to the recreational areas of Coppell and Irving to meet their needs. The absence of open space and park requirements commensurate with the development is totally inconsistent with the open space, park and community recreation facility standards of Coppell which requires 9-10 acres per 1,000 residents or over 200 acres for the 10,400 units.

Even in the June 2005 Amended Application, minimal parks and open space were provided and much of it was located under the high tension power lines. If Coppell maintains its current level of service, in light of the demand created by the Amended Application, new capital improvements would cost approximately \$21.7 million dollars for

² Despite the fact that Mr. Williams stated, "We believe that traffic will not be an issue and neither does Coppell..." (Trans. at 48), Coppell has strong concerns about traffic impacts. Mr. William's statement is completely inaccurate as it relates to Coppell.

Dallas City Council
January 25, 2006
Page 18

parks, community recreation facilities and open space. The burden on libraries will be similarly high for Coppell, an estimated \$2.5 million should it wish to maintain its current level of service. These are staggering numbers for Coppell which will not receive any revenue to offset these costs.

(ii) Fire, Police & Emergency Services

Although Dallas is statutorily responsible for providing emergency service to the Proposed Development, the remote location of the Proposed Development to Dallas provides implacable and unreasonable impediments to the provision of these emergency services. Coppell is not currently positioned to provide adequate first response to the Proposed Development, nor is it obligated to do so since the Proposed Development is not located within the Coppell city limits. However, because Coppell is a member of the Dallas County mutual aid agreement for fire and emergency services, it is reasonable to expect that Coppell will be called upon to provide services for this area. It is unreasonable for Dallas to rely on public services of a neighbor instead of providing those services itself or requiring the developer to do so.

The impact on police will be even worse since Coppell police officers cannot answer calls outside city boundaries. Dallas has not committed to building a police station in the Proposed Development nor does the Dallas staff report suggest how the police needs will be met. CB has indicated that a "storefront" police presence will be provided for what will be virtually a whole new city of over 20,000 residents, but the Dallas staff report does not even mention this issue. Police deficiencies in the Proposed Development will spill over into Coppell, jeopardizing the safety of Coppell residents. Moreover, due to additional traffic generated by the Proposed Development, Coppell will be forced to increase traffic enforcement along Belt Line Road which is the main arterial that the residents of the west side of the Proposed Development would use. Coppell will be forced to bear the burden of the development without generation of any tax revenue.

5. IMPACTS ON CISD

Ninety-five percent of the subject property is located within the boundaries of CISD, and therefore, CISD is responsible for providing school facilities for the demand generated within the boundaries of the subject property. CISD is one of the best school districts within the state of Texas and is committed to maintaining the quality of education for all current and future students. The proposed zone change will have an extremely adverse impact upon CISD's ability to continue to provide quality education due to the fact that CB has no accommodations for the students that will be generated by the development.

Dallas City Council
January 25, 2006
Page 19

In order to make long-term projections for student growth, Coppell ISD undertook a study to review large undeveloped areas of land in the District with potential for residential development.

The study analyzed almost 2,000 acres of land in fourteen areas that were either currently zoned residential or presented some expectation of residential development with a zoning change. This study did not consider the impact of development of the remaining TXU property within the City of Dallas. The study projected 7,772 dwelling units with 4,663 students if developed with single family homes.

Ironically, in one of the areas considered in the northwest sector of the district, CISD just last week was made aware of a large residential development plan that will be presented to the City of Grapevine for consideration. This development alone, with a combination of single family, town homes and mixed-use development could generate hundreds of new students for the District. Another very large tract of land in the northeast part of the District is actually within the City of Carrollton.

While all of the areas identified for potential new homes will not immediately materialize, there may, indeed, be others that will impact CISD's need for new school facilities. This study reveals that the District must immediately plan for the growth potential that will come with the in-fill of vacant land within our boundaries. The Cypress Waters development, at any number of dwelling units constitutes only a portion of student growth that is facing the District.

With a high school that currently exceeds desirable capacity by at least 500 students and middle schools that are at the limit of desirable capacity, there are not presently adequate school facilities to service the Cypress Waters Development. The district has now formed a large citizen/staff committee to discuss this critical issue. The committee will study possible facility grade alignment structures in light of an overcrowded high school and the expected new family units that will be constructed in the future.

Ignoring the information regarding school needs, and although the site is almost wholly within CISD, and the Proposed Development will generate thousands of students, CB makes no mention of the potential impact on the district, instead simply assuming that CISD will be able to meet the demand with its current facilities. Indeed, the Applicant's remarks at the Plan Commission meeting show a lack of consideration for CISD: "[O]ur issue is not how do we address school district concerns." (Trans. at 40.) In fact, CISD cannot serve the increase in student population without construction of new school (elementary, middle and high school) and administrative facilities which will take years to construct, including assemblage of a major campus facility.

Dallas City Council
January 25, 2006
Page 20

Taking into account all of the remaining build-out potential for all vacant land in the District, including Northlake, CISD has reviewed its student projections and undeveloped land and has determined that additional property must be acquired in order to provide appropriate educational facilities to all District students. CISD has no available capacity for any student population in its current overcrowded high school. CISD wants to provide a commensurate educational opportunity to any new students as it currently provides to its existing students. This can only be done through acquisition of land and construction of new facilities.

Nor has CISD been able to fully analyze the impact of the proposed rezoning since CB has not accepted CISD's calculations regarding student generation and required facilities and has failed to provide any information as to the type of housing that will be included in the proposed 10,488 units. CB estimates that the Proposed Development will generate 2,453 school children into CISD over 11 years, an estimate which was made without consultation with CISD as to the underlying assumptions. This projection is inaccurate and is erroneous. In fact, CISD estimates that the development will generate 3,600 or more children, a greater than 30% increase in the current student population. There is no way of knowing how many units will ultimately be built on the subject property due to a lack of information from CB, but there is no question that it may potentially generate as many as 5,100 school children should the site be developed at full capacity. This project is totally beyond the capacity of CISD to manage for at least ten (10) years.

CB also claims that the proposed development will generate \$345,478,728 for CISD over the next 20 years. At no time was CISD consulted regarding this number and CISD is skeptical about this high amount. Upon review of CB's revenue generation table, CISD found a number of inconsistencies. It does not appear that CB has taken the state's "Robin Hood" payment into account whereby CISD is deprived of 43% of the maintenance and operations revenue generated. Moreover, the debt service burden resulting from the construction of new facilities will be borne by all CISD taxpayers. No provision has been made by Dallas or CB for dedication of school land on the site except for one 10 acre parcel for an elementary school. Moreover, the Applicant only offered to sell the property at \$3.50 per square foot, despite the fact that it purchased the land at \$1.11 per square foot, thus proposing a triple profit at the public expense.

Moreover, CB claims that it offered to sell CISD a site for a school on this land at below market value. In reality, CB offered to sell property to CISD for almost three times what it had purchased the property for only several months earlier.

Dallas City Council
January 25, 2006
Page 21

6. CONCLUSION

In conclusion, Coppell and CISD request that the City Council DENY the Proposed Development and instead work as a regional partner to develop a regional plan for the entire North Lake site before any rezoning or development approval be granted.

Sincerely,

Robert H. Freilich
for PAUL, HASTINGS, JANOFSKY & WALKER LLP

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